

Site: Martha  
ID #: MD0980633069  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

078D

IN THE MATTER OF:

CENTRAL LOUISIANA ELECTRIC  
COMPANY, INC.  
Pineville, Louisiana,

and

COMMONWEALTH EDISON COMPANY  
Chicago, Illinois,

and

ILLINOIS POWER COMPANY  
Decatur, Illinois,

and

INTERSTATE POWER COMPANY  
Dubuque, Iowa,

and

IOWA PUBLIC SERVICE COMPANY  
Sioux City, Iowa,

and

KANSAS POWER & LIGHT  
COMPANY  
Topeka, Kansas,

and

MISSOURI PUBLIC SERVICE  
COMPANY  
Kansas City, Missouri,

and

Docket No. 86-F-0019

ADMINISTRATIVE ORDER

ON CONSENT

30271550



Superfund

NEW ENGLAND ELECTRIC  
SYSTEM, INC.  
Westboro, Massachusetts,

and

NEW ORLEANS PUBLIC SERVICE,  
INC./LOUISIANA POWER & LIGHT  
COMPANY  
New Orleans, Louisiana,

and

OKLAHOMA GAS & ELECTRIC  
COMPANY  
Oklahoma City, Oklahoma,

and

SAVANNAH ELECTRIC AND POWER  
COMPANY  
Savannah, Georgia,

and

SOUTHWESTERN ELECTRIC POWER  
COMPANY  
Shreveport, Louisiana,

and

WEST TEXAS UTILITIES COMPANY  
Abilene, Texas,

and

CAMPBELL SOUP COMPANY  
Camden, New Jersey,

and

CITY OF HOLDEN, MISSOURI,

and

LEAR SIEGLER, INC.  
Santa Monica, California,

RESPONDENTS.

Proceedings Under Section  
106(a) of the Comprehensive  
Environmental Response,  
Compensation, and Liability  
Act of 1980, 42 U.S.C.  
§ 9606(a).

ARTICLE I - INTRODUCTION

A. Jurisdiction

1. This Administrative Order on Consent ("CONSENT ORDER") is issued by the Regional Administrator of Region VII of the United States Environmental Protection Agency ("EPA" or "Agency") to Central Louisiana Electric Company, Inc., Commonwealth Edison Company, Illinois Power Company, Interstate Power Company, Iowa Public Service Company, Kansas Power & Light Company, Missouri Public Service Company, New England Electric System, Inc., New Orleans Public Service, Inc./Louisiana Power & Light Company, Oklahoma Gas & Electric Company, Savannah Electric and Power Company, Southwestern Electric Power Company, West Texas Utilities Company and Campbell Soup Company (all of the above hereinafter referred to as the "Generator Respondents"), to the City of Holden, Missouri (hereinafter referred to as "Respondent City") and to Lear Siegler, Inc. (hereinafter referred to as "Respondent Lear Siegler") (hereinafter collectively referred to as the "Respondents"), pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on August 14, 1981, by Executive Order 12316, 46 Fed. Reg. 42237 et seq., and further

delegated to the Regional Administrators by EPA Delegations Nos. 14-14-A and 14-14-C, both dated April 16, 1984. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the State of Missouri has previously been notified of this Order.

2. The Respondents neither admit nor deny the findings of fact or conclusions of law or determinations made herein; however, the Respondents agree not to challenge said findings, conclusions or determinations for purposes of this CONSENT ORDER only and agree not to contest EPA's jurisdiction with respect to this CONSENT ORDER, except as may otherwise be provided herein. The Respondents reserve all rights each may have to object to, contest, or defend against any allegation of violation of this CONSENT ORDER.

B. Statement of Purpose

1. By entering into this CONSENT ORDER, the mutual objectives of EPA and the Respondents are, inter alia:  
(1) to conduct an assessment to determine the location and extent of any release or immediate threat of release of polychlorinated biphenyls (PCBs) which pose or may pose an immediate danger to human health or welfare or the environment at the Martha C. Rose Chemicals Inc. facility in Holden, Missouri (hereinafter the "Holden facility"); (2) depending upon the results of such assessment take such response actions as are necessary to address releases of PCBs and to eliminate the threat of further immediate releases of PCBs, either of which may pose an immediate danger to human health or welfare or

the environment at the Holden facility; (3) to provide such actions as necessary to restrict access and secure the Holden facility; and (4) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of PCBs at the Holden facility by conducting such site surveys, sampling and analyses, inventories, and data evaluations as necessary to support and determine potential intermediate and final response actions. The activities undertaken pursuant to this CONSENT ORDER may not fully address all the endangerments that exist at the Holden facility.

2. If review of available information or discovery of additional information indicates that any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(22), sent wholly non-PCB hazardous substances to the Holden facility or if wholly non-PCB hazardous substances are discovered at the Holden facility, additional or expanded response actions may be required with respect to that person(s) and said hazardous substances in this or other Orders.

#### C. Parties

1. This CONSENT ORDER shall be binding upon each of the Respondents to the extent the CONSENT ORDER applies to each Respondent, as set forth herein, and EPA, their successors, assigns, subsidiaries, and upon all persons, agents, contractors and consultants acting under or for either the Respondents or EPA or both in carrying out the actions required by this CONSENT ORDER.

2. The Generator Respondents shall provide a copy of this CONSENT ORDER to each contractor, subcontractor, laboratory, and consultant retained to conduct any portion of the work performed pursuant to this CONSENT ORDER prior to said contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted under this CONSENT ORDER.

## ARTICLE II - FINDINGS OF FACT

Without trial or adjudication of any issues of fact, without any admission of fact by Respondents, EPA has found the following.

1. Martha C. Rose Chemicals, Inc. (hereinafter "Rose, Inc.") consists of a facility located at 500 W. McKissock in Holden, Missouri, where PCBs have been released as a result of activities of Rose, Inc.

2. Beginning in early 1983 through 1986, Rose, Inc. was engaged in the business of brokerage of PCBs and PCB items, processing of PCB capacitors and transformers for disposal, and decontamination of mineral oil dielectric fluids containing PCBs.

3. Pursuant to the authority granted to the EPA Regional Administrator under Section 6(e) of the Toxic Substances Control Act (hereinafter "TSCA"), Rose, Inc. was granted three approvals by the Regional Administrator of EPA, Region VII, to conduct the following activities involving PCBs: (A) to decontaminate mineral oil dielectric fluids containing PCBs at concentrations equal to or less than 10,000 ppm

(effective on March 15, 1983, and automatically terminated on March 15, 1986); (B) to process PCB capacitors for disposal (effective on October 15, 1983); and (C) to process PCB transformers for disposal (effective on July 1, 1984). These TSCA approvals only allowed Rose, Inc. to decontaminate and process PCBs. EPA has not granted Rose, Inc. any other approvals or permits to manage any other substances.

4. The express terms of each approval listed in paragraph 3, above, required Rose, Inc. to comply with all applicable federal environmental regulations regarding their PCB-related operations.

5. Between 1983 and 1986, the Generator Respondents and other entities caused materials containing PCBs to be shipped to the Holden facility for proper disposal under TSCA. Rose, Inc. did not properly manage, handle, and arrange for the lawful disposal of PCBs and PCB items shipped to its facility. The Generator Respondents assert that Rose, Inc. was also in violation of its contractual obligation to each Generator Respondent for failing to properly manage, handle and arrange for the lawful disposal of PCBs and PCB items.

6. Rose, Inc. failed to manage, handle and dispose of PCBs and PCB items in accordance with the applicable federal PCB regulations contained at 40 C.F.R. Part 761 and the approvals specified in paragraph 3, above.

7. EPA personnel conducted compliance inspections at the Holden facility on November 3 and 4, 1983; August 7-15,

1984; December 19, 1985; January 7, 1986; February 26, 1986; and March 17, 1986. Each such inspection revealed violations of applicable PCB regulatory requirements, including violations of requirements for the storage and marking of PCBs and PCB items (40 C.F.R. §§ 761.65 and 761.40, respectively); inadequate recordkeeping (40 C.F.R. § 761.180); and violations of requirements for the disposal and distribution in commerce of the PCBs and PCB items (40 C.F.R. §§ 761.60 and 761.20(c), respectively). In response to the above-referenced violations detected during the November 1983 inspection, EPA filed an Administrative Complaint and Notice of Opportunity for Hearing against Rose, Inc. on or about March 26, 1984. EPA and Rose, Inc. subsequently entered into a Consent Agreement and Final Order, effective June 26, 1984, wherein Rose, Inc. agreed to pay a penalty and take specific actions to come into compliance with the PCB rules and regulations. In response to the above-referenced violations detected during the August 1984 inspection, EPA filed a second Administrative Complaint and Notice of Opportunity for Hearing against Rose, Inc. on or about February 25, 1985. EPA and Rose, Inc. subsequently entered into a second Consent Agreement and Final Order, effective September 27, 1985, wherein Rose, Inc. agreed to pay a civil penalty and take actions to come into compliance with the PCB rules and regulations. Rose, Inc. failed to comply with the terms of both Consent Agreements and Final Orders, with the PCB rules and regulations, and with the EPA approvals specified in paragraph 3, above.



8. Beginning in January 1985, the Occupational Safety and Health Administration (OSHA) conducted inspections at the portions of the Holden facility used by Rose, Inc. and American Steel Works, Inc. Based on air and wipe samples taken during the inspections, OSHA issued a citation on or about July 19, 1985 to Rose, Inc. and American Steel Works, Inc. alleging violations of OSHA standards and assessing civil penalties.

9. Investigations conducted by EPA and/or the Missouri Department of Natural Resources have detected PCBs in fauna samples downstream from the Holden facility, in sludge drying beds at the Holden city sewage treatment plant downstream approximately 1000 feet from the Holden facility, and in branch and creek sediments downstream from the Holden facility. EPA believes these detected PCBs resulted from releases of PCBs at the Holden facility.

10. In April and May 1986, Rose, Inc. notified, among others, certain Generator Respondents and EPA expressing its unwillingness and/or inability to both come into compliance with the PCB rules and regulations, 40 C.F.R. Part 761, and properly dispose of PCB and PCB items at the Holden facility.

11. Since approximately March 1, 1986, Rose, Inc. has not engaged in active on-site operations, and on or near that date abandoned the Holden facility.

12. By letters dated July 9, 1986, EPA revoked Rose, Inc.'s transformer and capacitor processing for disposal approvals, referred to in paragraph 3, above, effective July 11 and 14, 1986, respectively.

13. On or about May 23, 1986, EPA issued an Administrative Order, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to Martha C. Rose Chemicals, Inc., American Steel Works, Inc., W.C. Carolan Company, Inc., Walter C. Carolan, and Environmental Technologies, Inc., among others, and which required: (1) the implementation of certain remedial actions in response to a PCB spill that occurred on or about May 13, 1986; (2) the implementation of certain measures to prevent environmental contamination from similar PCB spills; (3) the establishment of site security, including emergency warning and notification systems, construction of a chain link security fence, and the posting of the Holden facility; and (4) the submission of a detailed inventory/disposal plan for all PCBs and PCB items at the Holden facility. The above named parties refused to comply with the terms and conditions of the said Administrative Order. By letters dated June 13 and June 27, 1986, EPA notified the above-named parties that EPA would consider other actions based on the said parties' refusal to comply with the Order.

14. Large quantities of PCBs and PCB items presently are located at the Holden facility. EPA estimates of PCBs and PCB items at the Holden facility include:

(A) Approximately 4800, 55-gallon drums of solid wastes, capacitor cores, capacitor core paper, and PCB contaminated transformer and capacitor oil;

(B) Approximately 600, 64 cubic foot wooden crates containing solid waste, capacitors, and capacitor cores;

(C) Approximately 400 transformers (drained and undrained);

(D) A steel capacitor core bin containing approximately 5,760 cubic feet of cores;

(E) Approximately 1,312,500 pounds of capacitor cores in leaking 50 pound paper bags; and

(F) Numerous storage tanks and empty drums.

15. EPA believes PCB contaminated oils, soils, sediments, and/or sludges exist at the Holden facility in three bermed containment ponds and in a diversion ditch. In addition, PCB contaminated soils and/or sediments may exist at other locations at the Holden facility.

16. Polychlorinated biphenyls (PCBs) are defined as any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance. (40 C.F.R. § 761.3). PCBs have traditionally been used as dielectric and cooling fluids in various electrical equipment and for other purposes.

17. Depending upon concentration, degree of chlorination, and duration of exposure, PCBs may cause harmful effects to vegetation and may cause illness, disease, or other harmful effects to animal life or humans via oral and/or dermal exposure through air transport of PCB-contaminated dust or direct contact.

18. The Holden facility is located within the city limits of Holden, Missouri in a mixed use business, agricultural, and residential area. More specifically, two sides of the

Holden facility abut residential development, one side abuts agricultural land, and one side abuts other active business entities.

19. Upon learning that Rose, Inc. had ceased its operations, the Generator Respondents acted responsibly to seek an environmentally sound solution to contamination problems at the Holden facility. The Generator Respondents, with the assistance of their consultant, Clean Sites, Inc., are organizing and coordinating a joint effort to properly address the problems posed by the PCBs and PCB items at the Holden facility. The Generator Respondents have arranged for 24-hour surveillance by properly trained personnel.

#### ARTICLE III - CONCLUSIONS OF LAW

Without trial or adjudication of any conclusion of law, without any admission of the following conclusions of law by Respondents, EPA has found the following:

1. Respondents are each a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
2. The Holden facility is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
3. The PCBs and items containing PCBs at the Holden facility or which have been released from the said facility are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
4. The spills of PCBs at the Holden facility constitute a "release" and the inadequate control of PCBs at the Holden facility constitutes a threat of "release" into the

environment within the meaning of Sections 101(22) and 106(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9606(a).

#### ARTICLE IV - DETERMINATIONS

Based on the foregoing findings of fact and conclusions of law, the Regional Administrator has determined that:

(a) the actual release of PCBs and the threat of further releases of PCBs stored and/or disposed of at the Holden facility may present an imminent and substantial endangerment to the public health or welfare, or the environment; (b) in order to protect public health and welfare and the environment, it is necessary that the actions required in this CONSENT ORDER be taken to mitigate the release and/or threat of the release of PCBs from the Holden facility; and (c) the actions required in this CONSENT ORDER and all actions taken heretofore by the Generator Respondents are consistent with the National Contingency Plan, 40 C.F.R. Part 300.

#### ARTICLE V - ORDER

The Respondents agree to undertake all actions required by the provisions of this CONSENT ORDER and the Respondents acknowledge that each is individually liable for compliance with the applicable requirements of this CONSENT ORDER.

Based on the foregoing, it is therefore AGREED and ORDERED as follows.

A. Work to be Performed

1. The Generator Respondents shall implement the activities described in Attachment A, "STATEMENT OF WORK-INITIAL PHASE, ROSE CHEMICAL SITE, HOLDEN, MO." (the Statement of Work), which is incorporated herein in its entirety by this reference. All work performed pursuant to this CONSENT ORDER shall be under the direction of qualified personnel. The Generator Respondents shall notify EPA as to the identity of such personnel and of any contractors and subcontractors to be used in carrying out the activities described in the Statement of Work.

2. Within fourteen (14) working days of the effective date of this CONSENT ORDER, the Generator Respondents shall submit a proposed time schedule for implementation of the activities undertaken pursuant to the Statement of Work. Such time schedule is subject to EPA review, modification or approval. The EPA shall, in an expeditious manner, complete its review of such schedule and shall notify the Generator Respondents in writing of EPA's approval or disapproval of the schedule or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the schedule. Upon the Generator Respondents' receipt of any EPA disapproval, the provisions of Article VI.H., Resolution of Disputes, shall apply.

3. To the extent that the Generator Respondents conduct any response, other than at the Holden facility, such response action is done at the direction of the EPA in conformance with the NCP, 40 C.F.R. Part 300.

ARTICLE VI - PROCEDURAL AND LEGAL PROVISIONS

A. Authorized Representatives

1. The Generator Respondents, as a single entity, hereby designate the below-named individual (and alternate) as the single representative who shall be authorized to represent each and every Generator Respondent in all matters pertaining to this CONSENT ORDER. Said representative (hereinafter the "Respondent Generators' Executive") shall have authority both to receive all reports, comments, notifications, and other correspondence from EPA pursuant to this CONSENT ORDER and convey decisions on behalf of the Generator Respondents. The Generator Respondents have the right to change the said Respondent Generators' Executive or alternate by notifying EPA in writing at least five (5) calendar days prior to said change.

Mr. Jene L. Robinson  
500 S. 27th Street  
Decatur, Illinois 62525

(Alternate)  
Mr. Jay Pruett  
P.O. Box 21106  
428 Travis Street  
Shreveport, Louisiana 71156-0001

2. On or before the effective date of this CONSENT ORDER, EPA shall designate a Project Coordinator. The Generator Respondents must also designate a Project Coordinator,

if other than the Generator Respondents' Executive, on or before the effective date of this CONSENT ORDER, or after said effective date if the Generator Respondents decide to divide the responsibilities of the said Executive and Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of the provisions of this CONSENT ORDER. To the maximum extent possible, communications between the Generator Respondents and EPA that concern technical issues and/or matters shall be directed through the Project Coordinators. The Generator Respondents and EPA each have the right to change their respective Project Coordinator(s). Such change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to said change.

3. All correspondence, reports, work plans and other writing required under the terms of this CONSENT ORDER to be submitted to EPA shall be sent to the following:

J. Scott Pemberton  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

#### B. Records

1. Upon request from EPA, Respondents shall make available to EPA all scientific or technical data in their possession or control generated by the Respondents, or on behalf of the Respondents, pursuant to this CONSENT ORDER. Respondents shall also make available to EPA, upon request,



all documents and other records that concern any transaction among Rose, Inc., W.C. Carolan Company, Inc., American Steel Works, Inc., and Walter C. Carolan. Upon request, EPA will make available to Respondents all sampling and analytical data and hydrological or geological information in its possession that pertains to the Holden facility.

2. The Respondents may assert a business confidentiality claim covering part or all of the information submitted pursuant to the terms of this CONSENT ORDER in the manner set out in 40 C.F.R. § 2.203(b). The information covered by such a claim will be disclosed by EPA only to the extent, and by the means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B (1986). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Respondents.

3. The terms and provisions of this CONSENT ORDER shall not be interpreted or construed as preventing EPA from requesting information pursuant to its authorities under the law.

#### C. Access to the Site

1. Respondent City and/or Respondent Lear Siegler shall secure and provide such site access as necessary for the Generator Respondents to implement the terms of this CONSENT ORDER. Respondents shall grant EPA and/or their authorized representatives the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records; reviewing

the progress of the Generator Respondents in carrying out the provisions of this CONSENT ORDER; conducting such tests and taking such samples as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this CONSENT ORDER.

2. To the extent that the Holden facility or properties adjacent to the Holden facility are controlled by parties other than those bound by this CONSENT ORDER and that access to the Holden facility or properties adjacent to the Holden facility is necessary to fulfill the conditions of this CONSENT ORDER, including the accompanying Statement of Work, the Generator Respondents will use their best efforts to obtain access. The Generator Respondents shall not be required to pay any fee for access to the Holden facility. In the event that such necessary access agreements cannot be obtained, or if obtained, are revoked by responsible entities controlling access to the Holden facility or property near the Holden facility, Respondents shall notify EPA. If the Generator Respondents cannot obtain such necessary access, despite best efforts, EPA agrees to consider reasonable use of applicable statutory authority to assist the Generator Respondents in obtaining such access where voluntary access

is denied. Nothing contained herein is intended to relieve the Generator Respondents from complying with, or to prohibit other Respondents from inserting, any clause or provision (including but not limited to indemnification provisions, releases and covenants not to sue) in an agreement setting out rights or obligations of parties being given access to the Holden facility or property near the Holden facility, other than a clause or provision requiring the Generator Respondents to pay any money fee for access to the Holden facility.

3. Nothing herein shall be construed as restricting the inspection or access authority of EPA under federal law or regulations.

D. EPA Oversight

EPA shall appoint an On-Scene Coordinator (OSC) who shall have the authority vested by the National Contingency Plan at 40 C.F.R. Part 300. This includes the authority to halt, conduct or direct any activities required by this CONSENT ORDER and/or any response actions or portions thereof when conditions present an imminent and substantial endangerment to the public health or welfare or the environment or when necessary to assure that such activities or actions are not inconsistent with the National Contingency Plan. The OSC, or any person designated by the OSC, will have the right to move freely about the Holden facility at all times when work is being carried out pursuant to this CONSENT ORDER.

E. Liability

1. Neither the United States nor any agency or agents or employees thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this CONSENT ORDER, nor shall the United States or any agency or agents or employees thereof be held out as a party to any contract entered into by the Respondents in carrying out activities pursuant to this CONSENT ORDER. This paragraph does not apply to any agency of the United States that has been identified as a potentially responsible party at the Holden facility.

2. Nothing in this CONSENT ORDER, including its attachments, is intended to be, nor shall it be, an admission of fact or law, an estoppel or waiver of defenses for any purpose except as expressly provided herein. Nothing herein is intended to be, nor shall it be, a release or settlement of any private claims or injuries known or unknown to persons or property of any private person or local government agency.

F. Other Applicable Laws

1. All actions required to be taken pursuant to this CONSENT ORDER shall be undertaken in accordance with the requirements of all applicable local, state and federal laws

and regulations, including the PCB rules and regulations at 40 C.F.R. Part 761 as determined by EPA.

2. To the extent that compliance with any federal, state, or local law, requirement or approval is delayed despite Respondents' due diligence, Respondents will not be held in noncompliance with the terms of this CONSENT ORDER.

#### G. Record Preservation

The Respondents or their designated agent shall preserve, during the pendency of this CONSENT ORDER and for a minimum of seven (7) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, or contractors which relate in any way to the Holden facility or work performed pursuant to this CONSENT ORDER, notwithstanding any document retention policy to the contrary. After this seven year period, the Respondents shall notify EPA within sixty (60) calendar days prior to the destruction of any such document. Upon request by EPA, the Respondents shall make available to EPA such records or copies of any such records if requested by EPA within the said sixty (60) day period.

#### H. Resolution of Disputes

1. As to any submittal, plan, report, schedule or any part or refinement or revision thereof, for which EPA has provided the Respondents a notice of disapproval pursuant to the provisions of this CONSENT ORDER, Respondents shall,

within fourteen (14) calendar days of receipt of such notice either:

(A) Modify and resubmit to EPA such submittal, plan, report or schedule or portion thereof, revised to eliminate the deficiencies or unacceptable provisions therein as specified by EPA, in which case the disputed submittal, plan, report or schedule, or refinement or revision thereof shall become final for purposes of this CONSENT ORDER upon written notification of EPA's approval; or

(B) Confer with EPA in an attempt to achieve agreement on the disputed submittal, plan, report or schedule or any part or refinement or revision thereof. If agreement can be achieved by such conference, it will be memorialized in a joint memorandum between the parties and the disputed submittal, plan, report, or schedule, or any part, refinement, or revision thereof, shall become final for purposes of this CONSENT ORDER on the effective date of such memorandum.

2. If agreement concerning the disputed submittal, plan, report or schedule, or any part, refinement or revision thereof cannot be achieved by means of the procedures set out, above, EPA shall provide written notification to the Respondents of the disputed provision(s) of the CONSENT ORDER requiring action, that agreement has not and cannot be achieved, and that EPA considers the resolution of disputes process, as provided for herein, to be at an end.

3. None of the foregoing provisions shall prohibit any party from pursuing appropriate judicial or other remedies as provided by law on the disputed portions of any submittal plan, report or schedule; or from seeking such further and additional relief; or from undertaking such response actions as may be necessary to protect human health or welfare or the environment.

I. DELAY IN PERFORMANCE

If any event occurs which causes delay in the achievement of any of the requirements of this CONSENT ORDER, despite Respondents' good faith efforts, Respondents shall promptly notify EPA's On-scene Coordinator and/or Project Coordinator orally within seventy-two (72) hours and shall, within seven (7) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Respondents intend to implement said measures. For purposes of this CONSENT ORDER, such events are defined as any event arising from circumstances beyond the reasonable control of Respondents which could not be overcome by good faith efforts, including but not limited to, adverse weather conditions, delay caused solely by EPA in reviewing documents or acting on permits, or delay in obtaining access. EPA recognizes that the Respondents presently have a limited right of access at the Holden facility, and EPA agrees to consider the reasonable use of its legal

authority to obtain appropriate access on behalf of the Respondents. Increased costs of performance of the terms of this CONSENT ORDER shall not be considered circumstances beyond the control of Respondents. Respondents shall adapt all reasonable measures to avoid or minimize delays. In the event that the delay or anticipated delay has been or will be caused by circumstances beyond the control of Respondents, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

J. Subsequent Modification or Amendment

This CONSENT ORDER may be amended or modified by mutual agreement of EPA and the Respondents, and may include amendments or modifications necessary to address such cleanup or decontamination activities as are not currently addressed in the Statement of Work but are necessary to protect public health or welfare or the environment. Such amendments or modifications shall be in writing and shall have as their effective date, the date on which such amendments or modifications are signed by EPA.

K. Reservation of Rights

1. Notwithstanding compliance with the terms of this CONSENT ORDER, the Respondents are not released from liability for any actions taken by EPA, if any, beyond the terms of this CONSENT ORDER. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority,



including the right to seek injunctive relief, monetary penalties, and punitive damages for any violations of law or this CONSENT ORDER.

2. The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right to request that the Respondents perform tasks in addition to those detailed in the Statement of Work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States, and Respondents reserve the right to contest any such action.

#### L. Other Claims

1. In accordance with its policies, EPA waives any claims it might have under TSCA to assess civil penalties against any and all Generator Respondents which have arisen or which may arise out of the failure of Rose, Inc. to dispose of any Generator Respondent's PCBs, PCB items, and/or PCB-contaminated materials (sent by said Generator Respondent to the Holden facility) within one (1) year from the date when said PCBs, PCB items and/or PCB-contaminated materials were first placed into storage for disposal (40 C.F.R. § 761.65). This waiver applies only to the one-year disposal requirement specified in 40 C.F.R. § 761.65 and is expressly conditioned to each Generator Respondent upon:

- (1) A Generator Respondent having delivered the said PCBs, PCB items and/or PCB contaminated materials to the Holden facility at least ninety (90) days prior to the expiration of one year from when PCBs, PCB items and/or PCB-contaminated materials were first placed into storage for disposal; and
- (2) Compliance with the terms and provisions of this CONSENT ORDER.

Notwithstanding this provision, the Generator Respondents remain liable for the proper disposal of PCB-materials under applicable provisions of TSCA and CERCLA.

2. Except as expressly provided, no provision in this CONSENT ORDER is intended or shall be construed as a release by any party of any claims, causes of action or demand in law or equity against any person, firm partnership, corporation or governmental entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances taken to or taken from the Holden facility or otherwise released at the Holden facility.

3. In any action EPA brings, in its discretion, for the recovery of past response costs (to the effective date of this CONSENT ORDER) and response costs it incurs in overseeing the implementation of this CONSENT ORDER, EPA agrees to initially seek said costs from appropriate non-participating potentially responsible parties.

4. This CONSENT ORDER does not constitute preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

M. Termination and Satisfaction

The requirements of this CONSENT ORDER shall be deemed satisfied upon written notice from EPA that the Generator Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this CONSENT ORDER have been completed. EPA shall notify the Generator Respondents in writing if the report submitted at the completion of activities described in the Statement of Work does not demonstrate that all the terms of this CONSENT ORDER have been completed. In its written notification, EPA shall describe all deficiencies that must be addressed to fully comply with the terms of this CONSENT ORDER. The provision of Article VI.H., Resolution of Disputes, shall then apply.

N. Failure to Comply

The Respondents are advised that, under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), a Respondent's willful violation or failure or refusal to comply with any provision of this CONSENT ORDER applicable to it, may subject that Respondent to a civil penalty of not more than \$5,000 for each day in which such violation occurs or such failure to comply continues. Under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), a Respondent's failure to comply with any portion of this

CONSENT ORDER applicable to it, without sufficient cause, may subject that Respondent to liability for punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of that Respondent's failure to take proper action. Respondents reserve the right to contest, on all bases available in law or equity, any such actions for penalties or damages.

0. Opportunity to Confer and Effective Date

In consideration of the communications between the Respondents and EPA prior to the issuance of this CONSENT ORDER, it is agreed that there is no need for a settlement conference prior to the effective date of this CONSENT ORDER. Therefore, the effective date of this CONSENT ORDER shall be the date on which it is signed by EPA.

IT IS SO AGREED AND ORDERED:

By \_\_\_\_\_

Date \_\_\_\_\_

FOR: CENTRAL LOUISIANA ELECTRIC  
COMPANY, INC.  
Pineville, Louisiana

By \_\_\_\_\_

Date \_\_\_\_\_

FOR: COMMONWEALTH EDISON COMPANY  
Chicago, Illinois

By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: ILLINOIS POWER COMPANY  
Decatur, Illinois

By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: INTERSTATE POWER COMPANY  
Dubuque, Iowa



By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: IOWA PUBLIC SERVICE COMPANY  
Sioux City, Iowa

By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: KANSAS POWER & LIGHT COMPANY  
Topeka, Kansas

By: \_\_\_\_\_

\_\_\_\_\_ Date

FOR: MISSOURI PUBLIC SERVICE COMPANY  
Kansas City, Missouri

By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: NEW ENGLAND ELECTRIC SYSTEM, INC.  
Westboro, Massachusetts

By: \_\_\_\_\_

Date: \_\_\_\_\_

FOR: NEW ORLEANS PUBLIC SERVICE, INC./  
LOUISIANA POWER & LIGHT COMPANY  
New Orleans, Louisiana

By: \_\_\_\_\_

Date \_\_\_\_\_

FOR: OKLAHOMA GAS & ELECTRIC COMPANY  
Oklahoma City, Oklahoma

By: \_\_\_\_\_

Date \_\_\_\_\_

FOR: SAVANNAH ELECTRIC AND  
POWER COMPANY  
Savannah, Georgia

By: \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: SOUTHWESTERN ELECTRIC POWER COMPANY  
Shreveport, Louisiana



By: \_\_\_\_\_

\_\_\_\_\_ Date

FOR: WEST TEXAS UTILITIES COMPANY  
Abilene, Texas

By: \_\_\_\_\_

Date \_\_\_\_\_

FOR: CAMPBELL SOUP COMPANY  
Camden, New Jersey

By \_\_\_\_\_

\_\_\_\_\_  
Date

FOR: CITY OF HOLDEN, MISSOURI

By \_\_\_\_\_

Date \_\_\_\_\_

FOR: LEAR SIEGLER, INC.  
Santa Monica, California

By

MORRIS KAY  
Regional Administrator  
U.S. Environmental Protection  
Agency  
Region VII

Date

By

J. SCOTT PEMBERTON  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region VII

ATTACHMENT A

SOW - INITIAL PHASE  
MARTHA C. ROSE  
CHEMICAL, INC. SITE

STATEMENT OF WORK - INITIAL PHASE

MARTHA C. ROSE CHEMICAL, INC. SITE, HOLDEN, MO.

The Generator Respondents through their Contractor \* and with the oversight and assistance of Clean Sites, Inc. (CSI), will perform the following initial response activities in connection with the stabilization and assessment of the Martha C. Rose Chemical, Inc. site.

1. Release Assessment and Containment

The site shall be examined to determine the location and extent of any release or threatened release of PCBs which may pose an immediate danger to human health or welfare or the environment. With respect to any releases so identified, Contractor shall contain the release. This containment shall include, but not necessarily be limited to, the following:

- (a) remove and containerize all free-flowing liquids resulting from releases;
- (b) excavate and containerize any visually contaminated soils or other materials which have been contaminated as a result of releases and which continue to pose an immediate danger as determined by EPA's OSC; and
- (c) isolate the site from the external environment, as required, to prevent migration of contaminants from the facility property (e.g. isolate and secure sewer and storm lines and drains).

2. Site Stabilization

The site shall be stabilized to reduce immediate risks of releases of PCBs that threaten human health or welfare or the environment, as determined by EPA's OSC. Said site stabilization shall include, but is not necessarily limited to, the following activities:

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\* It is possible that more than one contractor will be involved in the work. The use of the term "Contractor" herein is generic, and refers to the specific contractor for the element of the work.

- (a) any drum, tank, tanker truck, or other container which provides a source for a release identified pursuant to Paragraph 1 above or which provides an immediate threat of such a release shall be drained or emptied into a secure tank truck or other approved container(s);
- (b) all PCBs and PCB-contaminated oils, stored in tractor, trailer, and tanker trucks and in exterior and interior bulk storage tanks located at the Holden facility, shall be contained in accordance with a Spill Prevention Control and Countermeasure (SPCC) Plan developed in accordance with the appropriate provisions of 40 C.F.R. Part 112;
- (c) any other materials stored at the site which present an acute fire or explosion hazard shall be removed from the site and disposed of in accordance with all applicable federal, state and local laws and regulations or secured in such a manner as to render the hazard non-acute;
- (d) all capacitors or capacitor components presently stored outdoors, if any, shall be containerized and placed in proper storage;
- (e) a weekly walk-through inspection program of all on-site PCB containers including drums, tanks, tractors, trailers and tanker truck will be implemented and records relating thereto will be maintained;
- (f) at least one empty bulk storage tank, the volume of which is equal to the largest bulk storage tank presently located at the Holden facility, will be maintained on-site in the event any existing bulk storage tank or other large container ruptures or otherwise becomes unsuitable for containing PCBs or PCB-contaminated oil; and
- (g) an appropriate number of other containers, as defined in 40 C.F.R. 761.65(c)(6), shall be maintained at the Holden facility in the event any existing drum or other container ruptures or otherwise becomes unsuitable for containing PCBs or PCB items.

### 3. Site Security

Measures shall be taken as necessary to restrict access and provide security to the site. These measures shall include the following:

- (a) establishment of twenty-four (24) hour security onsite with the presence of trained security personnel at all times;
- (b) the posting of warning signs adequate to warn the public of the presence of PCBs and other hazardous wastes, if any;
- (c) establishment of warning and notification systems adequate to immediately warn local, state and federal authorities of any fire, spill or other release at the Holden facility; and
- (d) construction of a complete chain link security fence surrounding the Holden facility.

#### 4. Review of Existing Data

CSI, with assistance of Contractor, will assemble existing reports, studies, manifests, trip tickets, and other information available to initially characterize the site. Contractor will prepare a facility plan showing the location and character of any drains or other conduits of any description that could serve to transport contaminated liquids from the facility to the surrounding environment. To the extent possible, with available information, CSI with assistance of Contractor will determine the nature and amounts of contaminated materials within the site boundaries. CSI with assistance of Contractor will evaluate the data and identify any additional information required to effect cleanup actions.

#### 5. Site Survey (Inventory, S/A)

To the extent additional information on site conditions is determined to be necessary pursuant to Paragraph 4, studies shall be performed to determine the nature and extent of the problem at the site and to gather data necessary to determine and support final response activities. Related activities will include the further development of a site inventory plan as well as sampling and analysis needed to characterize the facility. Any activities undertaken pursuant to this paragraph shall be performed in accordance with the work plans described in Paragraph 6.

#### 6. Work Plans

Plans will be developed by contractor and will be reviewed by Clean Sites, Inc. These plans will guide activities conducted



pursuant to this Statement of Work and be submitted to EPA for approval and/or comment. The EPA shall approve and/or comment on said plans in an expeditious manner. Said plans will include the following:

- (a) Health and Safety: Before any work is performed at the site, Contractor will prepare site-specific Health and Safety Plan. The plan will include, at a minimum:
  - (i) a designation of areas of contamination, decontamination, and project management.
  - (ii) types of protective clothing.
  - (iii) safe working practices.
  - (iv) contingency planning.

This plan will be consistent with any relevant guidance provided by the U.S. EPA documents "Guidance for Remedial Investigations under Superfund," and "The Interim Standard Operating Safety Guides" (September 1982 revision) and with applicable NIOSH/OSHA guidelines.

- (b) Quality Assurance/Quality Control (QA/QC): Before any sampling or analytical work is performed pursuant to this Statement of Work, Contractor will prepare a plan describing the measures to be taken to assure the quality of any sampling and analysis of materials at the site. Similarly, before any materials are removed from the site for disposal, pursuant to this Statement of Work, Contractor shall prepare a plan which shall describe the measures to be taken to ensure the proper destruction and/or other final disposition of said materials, if any. These plans will be consistent with guidance provided by relevant U.S. EPA guidance documents.
- (c) Sampling/Analysis: Contractor will develop a plan describing procedures to be followed in the site survey and the characterization of the materials at the site performed pursuant to this Statement of Work. The plan will describe the location of the samples, the reason for selecting this location and type of sample, the methods for obtaining and storing the samples, chain-of-custody procedures and the manner by which the results will be reported. This plan shall provide for a sampling and analysis program whereby the extent and magnitude of any PCB contamination of soils, sediments, surface or subsurface waters, or other portions of the environment, resulting

from the release [as defined by 42 U.S.C. § 9601(22)] of PCBs at or from the facility, will be determined.

- (d) Inventory: Contractor will prepare a plan to conduct an inventory of all PCBs and PCB items presently located at the site. This inventory, at a minimum, shall include the identification of each PCB container and the contents of each container and, where possible, the source of the material.
- (e) SPCC: Contractor will prepare a SPCC Plan pursuant to 40 C.F.R. Part 112 for all tractor, trailer, and tanker trucks and exterior and interior bulk storage tanks located at the Holden facility that contain PCBs or PCB-contaminated oil.

## 7. Reports, Notifications and Inspections

EPA shall have the right to inspect and observe any work performed in accordance with this Statement of Work. Within fourteen (14) days after completion of all work set forth in this Statement of Work, Generator Respondents shall submit in writing to EPA certification of the completion of all activities called for by this Statement of Work. Accompanying the certification, the Generator Respondents shall submit a final report which shall, at a minimum, include a detailed description of all work performed pursuant to this Statement of Work and a discussion of alternative final response actions for the site.

During the performance of the work described in this Statement of Work, the Generator Respondents shall provide periodic status reports to the EPA. These reports shall be provided biweekly, or as otherwise agreed among the parties, until the completion of all work called for by this Statement of Work. These reports shall include descriptions of the work performed during the immediately previous reporting period and of the work planned for the following reporting period, and shall also include copies of manifests and destruction reports, if any.

Additionally, subsequent to completion of the activities called for in Paragraphs 4 and 5, the Generator Respondents shall submit to EPA a report summarizing the known site conditions. This report will provide a description of the site, including the total area of the site, the general nature of the facility and its contents, and the nature and extent of the problem. The report will include a site map showing all buildings, utilities, drains, paved areas, tanks, and other features. The map will be of sufficient accuracy and detail to locate and report all existing and future work at the site.

8. Schedule

Within fourteen (14) working days of the execution of this Consent Order, the Generator Respondents shall submit to EPA all Work Plans developed pursuant to Paragraph 6 above for approval and/or review. The EPA shall approve and/or review such plans in an expeditious manner. Work Plans for inventory and for sampling/analysis shall each contain a schedule for implementation of all elements of the respective plan. Once EPA has approved said schedules, all work elements shall be completed within the approved schedule.